

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE:

DATE:

AUG 20 1974

MATTER OF: B-180927

61373  
98652**Mr. Arthur H. Easter - Overtime compensation****DIGEST:**

Where an employee of the Veterans Administration Hospital is assigned to standby duty as Administrative Officer of the Day, and such duty basically entails being available to answer official telephone calls in his own residence, the employee is not entitled to overtime compensation for periods of standby duty since such duty does not constitute hours of work as required by law.

This is a request for reconsideration of the action taken in Settlement Certificate of December 13, 1973, issued by our Transportation and Claims Division disallowing the claim of Mr. Arthur H. Easter for overtime compensation alleged to be due from January 1969 through October 1970 for periods in which he was on standby duty as Administrative Officer of the Day (AOD) incident to employment with the Veterans Administration (VA) Hospital at Los Angeles, California.

The record reveals that Mr. Easter was periodically scheduled on the AOD roster of the VA Hospital at Los Angeles. While assigned to AOD duty, claimant was required to be available at his residence to answer only emergency calls from 4:45 p.m. to 8 a.m. on weekdays and from 8 a.m. to 8 a.m. on Saturday, Sunday and holidays. Overtime compensation is claimed for the periods when assigned to AOD duty. Premium pay for overtime standby duty is authorized under 5 U.S.C. 5545 and by Civil Service Regulations (5 CFR 550.141) implementing the statute if certain conditions are satisfied. 5 U.S.C. 5545(c) provides in pertinent part as follows:

"(c) The head of an agency, with the approval of the Civil Service Commission, may provide that--

"(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis \* \* \*" (Emphasis added.)

Claimant's residence was never designated as his official station although it was on hospital grounds. Hence, it cannot be said that he was confined to his station as required by law. Moreover, the VA Hospital had never approved the premium pay. Mr. Easter, therefore, is not eligible for compensation under this provision of law.

An employee may also qualify for overtime pay for hours of work in excess of 40 hours in an administrative week under 5 U.S.C. 5542(a). The Civil Service Regulation in implementation of this statute, setting forth certain eligibility requirements for overtime pay, may be found in 5 CFR 550.111 which provides in pertinent part as follows:

"§550.111 Authorization of overtime pay.

"(a) Except as provided by paragraph (d) of this section, overtime work means each hour of work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is:

"(1) Officially ordered or approved; and

"(2) Performed by an employee."

The administrative office stated in a memorandum to Mr. Easter dated May 26, 1971, that a review of his time cards while employed at the VA Hospital in Los Angeles failed to show that duties were performed by him after normal working hours. In the case of Moss v. United States, 173 Ct. Cl. 1169 (1965), where a Government employee sued to recover overtime compensation claimed to be due him for telephone standby duty time which he was ordered to perform in his home from time to time after regular daytime working hours and on weekends, it was held that although the standby duty was ordered and approved by the employing agency, the duty did not constitute "hours of work" under section 201 of the Federal Employees Pay Act of 1945, as amended (68 Stat. 1109, 5 U.S.C. 911 (1958) (now 5 U.S.C. 5542a), since except for the requirement that plaintiff remain within hearing distance of the telephone, he was otherwise free to enjoy his normal pursuits.

Our Office has considered numerous cases, similar to the present case, wherein the employee was ordered to perform standby duty but was not restricted to the confines of his residence. Mr. Easter acknowledges that he could leave the reservation if he found a replacement from among

those listed in the officer of the day register. Under such circumstances we have held that the employee is not entitled to overtime compensation because "on call" duty at his residence, without more, does not constitute "hours of work" within the meaning of the statute. See B-167742, September 9, 1969; B-144675, January 19, 1961; B-173899, September 27, 1971; and cases cited therein. Our views are in consonance with those of the Court of Claims as expressed in Rapp and Hawkins v. United States, 167 Ct. Cl. 852 (1964), which held that standby status cannot be said to be predominantly for the employer's benefit, and therefore, is not compensable under the criterion set forth in Armour and Company v. Wantock, 323 U.S. 126, 133 (1944). This view was reaffirmed in Moss v. United States, 173 Ct. Cl. 1169, 1172 (1965), which stated:

" \* \* \* Except for the requirement that he remain within hearing distance of the telephone, the claimant was free to eat, sleep, read, entertain friends, and otherwise enjoy his normal pursuits while acting as a duty officer at home. \* \* \*"

While we have on occasion approved payment for actual working time, we have consistently refused to authorize compensation for standby time alone. Mr. Easter states that during his standby periods he received several calls requiring that he leave his residence to perform duties. In the event he did not receive pay for the work performed, he may submit a claim for overtime compensation to our Transportation and Claims Division giving the dates and hours worked and other pertinent information. It is noted that the administrative office, by memorandum of May 26, 1971, requested the same information so that it could be sent to the General Accounting Office for a decision regarding payment. The employee did furnish a duty roster showing the days he was assigned to standby duty but did not furnish any information showing the dates and hours worked when he was required to leave his residence to perform duties.

Upon reconsideration the settlement of December 13, 1973, by the Transportation and Claims Division disallowing Mr. Easter's claim is sustained.

R. F. KELLER

Acting

Comptroller General  
of the United States